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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 05-00261 HG
	)	
Plaintiff,	)	MEMORANDUM OF LAW IN
	)	SUPPORT OF MOTION
vs.	)	
	)	
JAMES TROIANO,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION**

James Troiano (Troiano) contends that the Indictment filed against him should be dismissed or, in the alternative, the testimony of potential government witness Catherine Symonds be disallowed.

On August 8, 2005, a hearing on Troiano's motion to withdraw as counsel was heard. A large part of the proceedings were sealed to the public, Troiano's defense counsel, and the government's attorney. Present in the courtroom were

Troiano, the Honorable Judge Helen Gillmor, necessary court personnel and federal marshals. The court engaged Mr. Troiano in a lengthy (approximately 45 minute) dialogue with respect to his case.<sup>1</sup> Confidential matters relating to Troiano's case and his defense were discussed during the proceedings.

It is believed that confidential information from the hearing was shared to a government witness, Catherine Symonds (Symonds), Troiano's ex-wife, when she was served with a subpoena by federal marshals approximately two days after the hearing.<sup>2</sup> Symonds digested the information, and then it is believed discussed certain confidential matters with employees (and potential government witnesses) at the Brown Bottle liquor store.

Troiano's Federal Detention Center phone records were subpoenaed by the defense under seal and then inexplicably provided to the government prior to receipt by Troiano.<sup>3</sup> An August 12, 2005 FDC recording reveals that Symonds informed Troiano's mother, Linda Corpe, that she received information relating to the August 8, 2005 proceedings from federal agents who served her with a trial subpoena.

While it is presently unknown as to the precise nature and extent of the confidential August 8, 2005 courtroom proceedings disclosed to Symonds, it is known that

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<sup>1</sup> The defense has requested a copy of the transcript, however, presently it has not been prepared. Due to the confidential nature of the hearing, the transcript request asserts that the transcription should not be provided to the government.

<sup>2</sup> The defense intends to call Symonds as a witness during the evidentiary phase of the instant motion.

<sup>3</sup> An independent motion to dismiss indictment based on the circumvention of the court ordered subpoena duces tecum will be filed.

Symonds was informed that Troiano had repeatedly attempted to fire his attorneys and that Judge Gillmor was “pissed off” at Troiano. As for Symonds’s subsequent actions, she went to the Brown Bottle liquor store in an attempt to ascertain the circumstances surrounding the robbery. Purportedly, information was mutually shared between Symonds and prospective government witnesses. Symonds admits in the FDC phone records that she discussed the factual circumstances of the case with employees of the Brown Bottle.

Troiano contends that his Fifth Amendment due process rights to a fair trial were violated through the disclosure to Symonds of matters occurring during the closed August 8, 2005 hearing. Consequently, he respectfully submits that this Honorable Court should dismiss the Indictment or preclude testimony from Symonds.

DATED: Honolulu, Hawai'i, February 27, 2006

BY: 

TODD EDDINS  
ATTORNEY FOR  
DEFENDANT JAMES TROIANO

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following parties via hand delivery on February 27, 2006.

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DATED: Honolulu, Hawaii, February 27, 2006

  
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